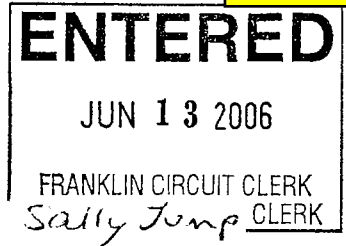


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION NO. I
CIVIL ACTION NO. 98-CI-01579



COMMONWEALTH OF KENTUCKY
ex rel. GREGORY D. STUMBO,
ATTORNEY GENERAL

PLAINTIFF

v.

BROWN & WILLIAMSON TOBACCO CORP,
et al.

DEFENDANTS

OPINION AND ORDER

This matter comes before the Court on the motion of the plaintiff, Commonwealth of Kentucky, seeking a declaratory judgment. Specifically, the plaintiff seeks a declaration pursuant to § IX of the Master Settlement Agreement (“MSA”) that it has “diligently enforced” the provisions of KRS §§ 131.600 *et seq.* and that its Allocated Payment under the MSA for 2003 is not subject to reduction by a 2003 Non-participating Manufacturer Adjustment. In response, the Original Participating Manufacturers (“OPMs”)¹ have filed a motion to compel arbitration and to dismiss, or in the alternative stay, the Commonwealth’s motion seeking declaratory relief, citing in support thereof § XI(c) of the MSA, which the OPMs contend requires arbitration of the instant dispute. The motion to compel arbitration has been joined by various Subsequent

¹ The Original Participating Manufacturers joining in the motion to compel arbitration include Phillip Morris USA, R. J. Reynolds, and Lorillard Tobacco Company.

Participating Manufacturers ("SPMs").² The motion to compel arbitration was the subject of oral argument on June 8, 2006.

The Court considers the motion to compel arbitration a threshold issue. The Court, having considered all of the briefs and arguments, concludes that the motion to compel arbitration must be granted. Under the arbitration clause, MSA § XI(c), the determination that must be made as to the due diligence, or lack thereof, of the state in enforcing KRS §§ 131.600 *et seq.*, must be made by the arbitration panel referenced in MSA § XI(c) because it arises out of a determination by the Independent Auditor that the Participating Manufacturers -- the OPMs and the SPMs -- lost Market Share, as defined by the MSA, in 2003. To rule otherwise would promote chaos. The concept as contemplated in the MSA is that such matters would be resolved through arbitration governed by the United States Federal Arbitration Act. The parties -- the states, the OPMs and the SPMs -- agreed to arbitration.

Accordingly, the Motion to Compel Arbitration shall be and is hereby GRANTED and the plaintiff's Motion for Declaratory Judgment is STAYED.

This is a final and appealable order, there being no just cause for delay.

SO ORDERED this 13 day of June, 2006.



JUDGE, FRANKLIN CIRCUIT COURT

² The Subsequent Participating Manufacturers joining the motion to compel arbitration include Commonwealth Brands, Inc., Liggett Group LLC, Sherman 1400 Broadway N.Y.C. Inc., King Maker Marketing, Inc., Japan Tobacco International USA, Inc., Kretek International, Inc., P. T. Djarum, Liberty Brands, LLC, Vibo Corporation d/b/a General Tobacco, Santa Fe Natural Tobacco Company, Inc., Von Eicken Group, Farmers Tobacco Co. of Cynthiana, Inc., and Top Tobacco, L.P.

HAVE SEEN:

Larry C. Deener
by ~~Jeff~~ per authority

Larry C. Deener, Esquire
LANDRUM & SHOUSE LLP
P. O. Box 951
Lexington, KY 40588-0951
(859) 255-2424
Counsel for Plaintiff

Charles S. Cassis
by ~~Jeff~~ per authority

Charles S. Cassis
Theresa A. Canaday
FROST BROWN TODD LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202-3363
(502) 589-5400
Counsel for OPMs

J. Guthrie True

J. Guthrie True
JOHNSON TRUE & GUARNIERI
326 West Main Street
Frankfort, KY 40601
(502) 875-6000
Counsel for SPMs

Distributed electronically by Defense
counsel per order of the Judge to:

David T. Schaefer, Esq.
Woodward, Hobson & Fulton, LLP
2500 National City Tower
101 South Fifth Street
Louisville, KY 40202

Alexander Shaknes, Esq.
James Mathias, Esq.
Brett Ingerman, Esq.
DLA Piper
1251 Avenue of the Americas
New York, NY 10020-1104

Charles S. Cassis, Esq.
Theresa A. Canaday, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363

Thomas D. Schroeder, Esq.
Womble, Carlyle, Sandridge & Rice, PLLC
One West Fourth Street
Winston-Salem, NC 27101

Penny Reid, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153-0023

Larry C. Deener, Esq.
Caroline Pitt Clark, Esq.
Elizabeth A. Deener, Esq.
Landrum & Shouse, LLP
P.O. Box 951
Lexington, KY 40588-0951

William Jay Hunter, Jr.
2560 Aegon Center
400 W. Market Street
Louisville, KY 40202

Sanjay Patel
Dhanraj International
11731 Sterling Avenue, Suite F

Riverside, CA 92503
Robert Ammerman, Esq.
Farmers Tobacco Co.
636 U.S. Hwy. 27 N.
Cynthiana, KY 41031

Philip Graham, Esq.
125 Broad Street
New York, NY 1004-2498

Martin J. Smolik, Jr. Esq.
5327 W. First Street
Greeley, CO 90634

Maxwell Stephen Irving
Gallion House
12 Lion & Lamp Yard
Farmham, Surry GU9 7LL, England
United Kingdom

Eng. Mohamed Sadek
Eastern Company S.A.E.
450 Ahram Street, Giza
P.O. Box 1543
Cairo, Egypt

Ron Denman, Esq.
2980 N.W. 10 Avenue
Miami, FL 33172

John S. Chen, Esq.
6340 S. Islandhill Road, Suite 8
Las Vegas, NV 89120

Joseph A. Ginsberg, Esq.
Levin Ginsberg, Esq.
180 N. LaSalle St., 32nd Floor
Chicago, IL 60601

Mark Sibley Ryan, Esq.
Daughters & Ryan
211 Mallard Run
P.O. Box 609
Smithfield, NC 27577

Rob Wilkey, Esq.
900 Church St.
P.O. Box 51587
Bowling Green, KY 42102

K. Gregory Haynes, Esq.
Virginia Hamilton Snell, Esq.
Wyatt, Tarrant & Combs
500 W. Jefferson St., Suite 2800
Louisville, KY 40202

Bhvani Parameswar, Esq.
12 Route 17 North, #304
Paramus, NJ 40202

Mark Cassar, Esq.
Jonathan Furst, Esq.
5449 Endeavor Court
Moorpark, CA 93021-1721

Scott Feit, Esq.
555 Broad Hollow Road
P.O. Box 1569
Melville, NY 11747

Neal Beaton, Esq.
195 Broadway, 24th Floor
New York, NY 10007

Per Buch
Mac Baren Tobacco Company
Porthusjev 100
DK-5700 Svendborg

Ralph Angiuoli, Esq.
6220 Hacker's Bend Ct., Unit F
Winston-Salem, NC 27103-9778

Roberto Fleitas, Esq.
782 N.W. Lejeune Road, Suite 530
Miami, FL 33126

William E. Johnson, Esq.
J. Guthrie True, Esq.
Johnson, True & Guarnieri
326 W. Main St
Frankfort, KY 40601

Aaron Marks, Esq.
1301 Avenue of the Americas
New York, NY 10019

Dominic Chu, Esq.
231 Grand Street, Suite 3F
New York, NY 10013

Jack Henson, Esq.
2280 Mountain Industrial Blvd.
Tucker, GA 30084

Aleli Calso, Esq.
1615 Alvarado St.
San Leandro, CA 94577

Silvia Bolatti, Esq.
45 Broadway, Suite 2300
New York, NY 10006

Henry Roemer, Esq.
204 Northgate Park Drive
Winston- Salem, NC 27106-3480

Daisy Acre
6805 Ayala Avenue
Makati City, 1227 Phillipines

Gerd Wiesenhutter
Hagelberger Strasse 52
D-10965 Berlin

Mark Dunham, Esq.
17998 Chesterfield Airport Road
Chesterfield, MO 63005

Stanley Freidman, Esq.
123 William Street, 25th Floor
New York, NY 10038

Concepcion Leyes De Chaves y Calle 4
Parques Industrial Alberto Barrail e Hijos
Asuncion, Paraguay

Stephen Daniel, Esq.
1304 Annapolis Drive
Raleigh, NC 27608

Erik Stokkebye
Tobaksvej 1
5610 Assens, Denmark

Robert Engels
Dieselstr.1
8411 Geisenhausen b.
Lanshut, Germany

Randy Nuckolls, Esq.
1900 K Street, N.W.
Washington, D.C. 20006

Jean Dominique Comolli
182-188 Avenue de France
75639 Paris CEDEX 13
France

Seth I. Gold, Esq.
2301 Ravine Way
Glenview, IL 60025

Assaad Hark, Esq.
763 Kasota Ave., SE
Minneapolis, MN 55414

Henry C. Roemer, Esq.
204 Northgate Park Drive
Winston-Salem, NC 27106

Dennis Bruce, Esq.
Bekenton
690 Lincoln Road, Suite 303
Miami Beach, FL 33139

Jesse W. Hodges, Esq.
P.O. Box 1660
Conway, SC 29528

Robert J. Brookhiser, Esq.
Howrey LLP
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004

William J. Hunter, Jr. Esq.
2650 AEGON Center
400 West Market St.
Louisville, KY 40202

Jean V. MacHarg, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350

Thomas D. Schroeder, Esq.
Womble, Carlyle, Sandridge & Rice,
PLLC
One West Fourth Street
Winston-Salem, NC 27101

Idit Froim, Esq.
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153-0023

Penny Reid, Esq.
Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153-0023